

A retailer's costs of doing business are not deductible from his gross receipts. See 86 Ill. Adm. Code 130.410. (This is a GIL.)

January 7, 2003

Dear Xxxxx:

This letter is in response to your letter of August 13, 2002. Your letter was forwarded to the Legal Services Office for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

An out of state vendor has billed us sales tax on special service charges which were agreed to separately from the selling price. These separately stated charges are for customized logo and art work done on nylon tote bags, water bottles, pens, and other miscellaneous items (invoice copy attached).

We adjusted the tax and informed the vendor that the charges were not part of the selling price which were separately agreed upon and stated in our purchase order (copy attached). Furthermore, we provided the vendor with regulation section 130.450(b) to support our position (copy attached). However, the vendor does not agree with our determination.

Please advise us of the Department of Revenue position or determination. If you need additional information, please contact me at the number shown below.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business are not deductible from his gross receipts. This principle is also articulated in Section 130.410 of the Department's rules, enclosed. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "labor or service costs" ... "or any other expenses whatsoever" are not deductible from gross receipts. Although you have cited

Section 130.450, it is the Department's position that that regulation has more to do with installation-type charges.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.1995, which is the regulation for "Personalizing Tangible Personal Property." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price. Such items include, for example, calendars, pens, water bottles, and similar items. These items are taxed on 100% of the selling price, which would include labor or other service costs.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax. Such items include, for instance, business cards.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen use to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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